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10/020,779	12/14/2001	Scott R. Swix	01377	9532
38516 7590 06/10/2009 AT&T Legal Department - SZ Attn: Patent Docketing Room 2A-207 One AT&T Way Bedminster, NJ 07921				
EXAMINER				
VAN BRAMER, JOHN W				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly amended independent claims 1 and 17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally submitted claims were directed towards receiving programming content delivered as a scheduled lineup having advertisements inserted into future time slots. The advertisements are categorized as overridable or nonoverrideable by the network provider server. Then the network provider server receives a request from an advertiser to replace the advertisement with a different advertisement. The network provider server determines if the advertisement is overrideable, if the two advertisements are nearly equal in time length, if the two advertisements are in a compatible format, when the last time the replacement advertisement or a similar advertisement has been shown, and based upon the outcome of the determining step inserting or declining insertion of the replacement advertisement. Then the programming content including the replacement advertisement is broadcast, assuming replacement was indicated by the determining steps. The newly proposed invention discloses a webpage that is stored at the network provider server. The webpage is to be distributed to advertisers. The network provider server also stores an advertising schedule for schedule programming and advertisement characteristics for advertisement time slots in the schedule programming. The database also stores advertisement pricing information for each advertisement time slot. The network provider server sends the webpage to the advertiser. This newly claimed webpage notifies the advertiser of a future

advertisement time slot. The advertiser then sends advertisements to the network server. The advertisements are categorized as overridable or non-overridable by the advertiser. The advertisement is then stored in memory and the database is used to select and schedule an advertisement for insertion into a future time slot. The network server then apparently receives the web page that was provided to the advertiser, the webpage now includes a request to override the schedule advertisement for the future advertisement timeslot. The network server determines if the advertisement is overrideable, if the two advertisements are nearly equal in time length, if the two advertisements are in a compatible format, when the last time the replacement advertisement or a similar advertisement has been shown, and based upon the outcome of the determining step inserting or declining insertion of the replacement advertisement. Then the programming content including the replacement advertisement is broadcast, assuming replacement was indicated by the determining steps. The originally filed claims represent a subcombination of the newly proposed combination claims. The original invention has the network provider server categorizing advertisements as overrideable or nonoverridable, and then performing steps to determine whether insertion should take place, based upon a request from the advertiser. The newly proposed claims allow both the network provider and the advertiser to categorize advertisements as overrideable or non-overridable. The network server is utilized to create and store a webpage that is sent to elicit request from advertisements. This webpage is returned with a request to replace an advertisement as well as a specification of a financial premium for replacing the

advertisement. The original invention used a scheduled lineup having advertisements inserted into the future time slot. The newly proposed invention includes not only a schedule lineup having advertisement inserted into the future time slot, but also incorporates storing an advertising schedule for scheduled programming, wherein the schedule contains advertisement characteristics for each advertisement time slot in the scheduled programming, receiving advertisements from advertisers and selecting advertisements for insertion. Now we have two different types of content that is ready to be delivered. The original programming content, that is found in the original invention as well as the newly claimed invention, and was received in tact and already contains advertisements. The newly proposed invention also has a second type of content that is ready for delivery, in that it selects and inserts advertisements into a content stream. Then decisions are made as to whether to replace either the originally inserted advertisements or the newly inserted advertisement with a different advertisement. As the original invention only contemplated replacing advertisements, that have already been inserted into future time slots, and did not contemplate the actual selection of advertisement for insertion into said future timeslots, the inventions are a combination subcombination of each other.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-6, 8, and 17-20, withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Van Bramer  
/John Van Bramer/  
Examiner, Art Unit 3622

